

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE; as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs,</p> <p>vs.</p> <p>DONALD COX and CATHERINE COX, husband and wife, et al., et ux., Defendants.</p>	<p>Case No. P1300CV20030399</p> <p>RULING</p>	<p align="center">FILED</p> <p>DATE: MAR 20 2015</p> <p align="center">1:19 O'Clock P.M.</p> <p align="center">DONNA McQUALITY, CLERK B. Chamberlain</p> <p>BY:</p> <p align="center">Deputy</p>
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<p>HONORABLE DAVID L. MACKEY DIVISION 1</p>	<p>BY: Jennifer Jaramillo, Judicial Assistant DATE: March 19, 2015</p>
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The Court has considered the Varilek's Objection To Assignment Of Case To Division 1 and the Coxes' Response To James Varilek's Objection To Assignment Of Case To Division 1. The Court also has reviewed the file.

The Court finds that in this case the Varilek's have waived their right to a change of judge pursuant to Rule 42(f), *Arizona Rules of Civil Procedure* and the Court confirms the following finding as set forth in the Court's January 8, 2015 Order:

"The Court finds that the March 5, 2013 dismissal of P1300CV20090822 rendered the July 27, 2009 Notice of Change of Judge filed in P1300CV20090822 against this Judge moot. This Court can now hear the remaining issues."

The Court finds that the Defendants Robert and Catherine Cox used their one change of judge per side pursuant to Rule 42(f), *Ariz.R.Civ.P.* when they noticed Judge Trebesch on February 5, 2014.

The Court further confirms the finding set forth in the Court's September 19, 2008 Ruling Re: Notice that "Plaintiffs have waived the right to a Change of Judge, per Rule 42(f)(1)(D)(ii)(aa), *Arizona Rules of Civil Procedure*, since the Court has issued rulings on contested issue since the remand from the Court of Appeals."

Therefore, the Court finds that there is no impediment to this Court retaining this case to rule upon the remaining pending-matters. However, the Court has determined that in a final attempt to avoid an additional appellate issue in an already complex case, this Court will assign the case to the remaining Yavapai County Judge who is able to hear this case.

IT IS ORDERED assigning this case to the Honorable Jeffrey G. Paupore for all further proceedings.

The Court notes that the following matters are pending:

- James Varilek's Motion to Strike Exhibits 5-12 to *Motion for Reconsideration re: August 25, 2014 Ruling re: Attorneys' Fees Awarded in Favor of Varilek.*
- Plaintiffs' Withdrawal of Application for Attorneys' Fees Against Joined Defendants.
- Defendants' Motion for Reconsideration re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded in Favor of Varilek.
- Notice of Lodging of Proposed Final Judgment.
- Plaintiffs' Rule 54(g) Motion for Award of Attorneys' Fees and Non-Taxable Costs.

cc: J. Jeffrey Coughlin – electronically via Clerk's Office (e)
Jeffrey R. Adams – electronically via Clerk's Office (e)
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk's Office (e)
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk's Office (e)
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk's Office (e)
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✓ William H. "Bill" Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
✓ Gary and Sabra Feddema- 9601 East Far Away Place, Prescott Valley, AZ 86315
✓ William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
✓ Karen L. and Michael P. Wargo- 9200 East Spurr Lane, Prescott Valley, AZ 86315
✓ Linda J. Hahn- 10367 W. Mohawk Lane, Peoria, AZ 85382
✓ Sergio Martinez and Susana Navarro- 10150 N. Lawrence Lane, Prescott Valley, AZ 86315
✓ Lloyd E. and Melva J. Self- 9250 E. Slash Arrow Drive, Prescott Valley, AZ 86315
✓ Rynda and Jimmy Hoffman- 9650 East Spurr Lane, Prescott Valley, AZ 86315
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